

EXECUTIVE NOTE

THE NATIONAL HEALTH SERVICE (SUPERANNUATION SCHEME AND COMPENSATION FOR PREMATURE RETIREMENT) (SCOTLAND) AMENDMENT REGULATIONS 2006 SSI/2006/561

The above instrument is made in exercise of the powers conferred by sections 10, 12 and 24 of, and Schedule 3 to, the Superannuation Act 1972. These powers have been devolved to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750). The instrument is subject to the negative resolution procedure.

Policy Objectives

This instrument makes amendments to the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (“the superannuation scheme regulations”) and the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003 (“the compensation regulations”). These Regulations will implement, into the NHS superannuation scheme and compensation regulations, the revised NHS redundancy arrangements for which agreement has been reached at a UK level. Details of the new arrangements have been sent to NHS employers by the Health Department to take effect from 1 December 2006. The instrument effectively mirrors similar amendments made by an equivalent instrument in England and Wales which was made on the 3rd November and laid on 7th November 2006 .

The provisions in regulations 2(1)-(3) and 3 of the instrument will have retrospective effect from 1 December 2006. This is necessary to meet the requirements of the EC Directive on equality in employment and vocational training, in relation to age-discrimination in particular, which must be implemented by the UK by 2 December 2006. Provisions in sections 12 and 24 of the Superannuation Act 1972 give the Scottish Ministers powers to make regulations with retrospective effect.

Background

The UK-level partnership review of NHS redundancy arrangements has been driven by the recent implementation of the EC Directive on equality in employment and vocational training, particularly aspects of age discrimination. A consultation was held in July and after receipt of a largely positive response, the agreement was signed off by the NHS Staff Council, and endorsement obtained from the UK Health Ministers. The key planks of the agreement were the immediate introduction of improved benefits for staff under 50, and the removal of enhanced pension benefits for existing staff over 50 over a five year transitional period. Details of the new arrangements have been sent to NHS Scotland employers by the Health Department

NHS Redundancy arrangements

The redundancy arrangements for NHS staff are set out in the Agenda for Change: NHS Terms and Conditions of Service Handbook. Certain arrangements (relating to entitlement to a lump sum compensation depending on the length of service) apply to all staff, but staff who

are members of the NHS pension scheme and over the minimum pension age (normally 50) may also receive pension benefits early, often enhanced. Together, these arrangements can lead to significant differences between redundancy payments available to staff of different ages. In light of the impending EC Directive on age discrimination, revised arrangements are to be introduced.

The new arrangements include a flat rate lump sum of one month's pay for each year of service for all staff, to a maximum of 24 month's pay. Eligible pension scheme members may instead choose to receive an unreduced pension on redundancy, with the value of the lump sum compensation being reduced to balance the cost of not reducing their pension. This will mean that all staff are treated equally whatever their age. These changes will mean the level of compensation available to staff under 50 is increased, but it is reduced for many over 50s. Transitional periods have also therefore been introduced.

Changes made by this instrument

The NHS (Scotland) Regulations 1995 mainly cover:

- The qualifying criteria for the payment of a basic pension.
- The cost to the NHS employers of both the basic pension up to normal retirement age and the extra pension that results from additional membership credited on redundancy.

The NHS (Compensation for Retirement) (Scotland) Regulations 2003 mainly cover:

- The amount of additional membership to be credited on redundancy.

These amending regulations therefore span both sets of regulations.

In summary the changes to the pensions element of the redundancy arrangements implemented by this instrument are -

- The right to an enhanced pension on redundancy for over 50's will be gradually removed over a 5 year transitional period.
- There will be no detriment protection until 30 June 2007.
- Alternatively, staff over the minimum pension age will be able to retire early on redundancy with no reduction in the value of their pension (and receive any balance of the flat rate amount that would not be used up to fund such payments).
- Staff can take early retirement in the interest of service without the value of their pension reducing.
- Part-time staff are treated in a similar and proportionate manner to other staff.

The superannuation scheme amendments include:

- The qualifying criteria and new redundancy pension provisions from 1 December 2006. These will also apply to all NHS employees over minimum retirement age who are made redundant after transition ends on 1 October 2011.
- The qualifying criteria for transitional arrangements

- The choice between new or old rules for those covered by transitional arrangements (who are also able to meet the qualifying criteria for the new arrangements).
- The position of members over minimum and normal retirement ages.

The compensation scheme amendments include:

- The adjustment to the amount of additional membership credited under the transitional arrangements for redundancies occurring between 1 December 2006 and 30 June 2007.
- The further adjustment to the amount of additional membership credited under the transitional arrangements for redundancies occurring between 1 July 2007 and 30 September 2011.

Consultation

As part of the UK review of the compensation arrangements within the NHS by NHS Employers (on behalf of the DH, Welsh Assembly and the Scottish Executive) and the NHS Trade Unions a separate consultation exercise was held to obtain views from NHS employers and employees with other government departments on the proposed policy amendments. This instrument (in draft form) has also been the subject of consultation with representatives of NHS Scotland employers and employees and with other government departments. No suggestions for major changes were received.

Consolidation

In the Executive Note to S.S.I. 2005/544 we recognised that, with numerous amendments to the superannuation scheme regulations, users would benefit from a consolidation. We have prepared a draft version which will be made as soon as practically possible. Due to the EC Directive on equality in employment and vocational training (EC/2000/78) deadline it was essential that this instrument was laid first. The changes contained within this instrument will be incorporated into the consolidation.

Financial effects

The driver for the amendments in these regulations is the need to remove age-discriminatory provisions from the current NHS redundancy arrangements that would not be compliant with the EC Directive on equality in employment and vocational training (EC/2000/78). The regulations implement the UK agreement reached on future redundancy payments for NHS staff. Costs of redundancy will depend on future behaviour and management decisions by NHS employers and are therefore difficult to predict. However, should recent redundancy patterns continue, the revised provisions in these regulations will cost no more than previous costs.

The instrument has no impact on business, charities or voluntary bodies and no separate Regulatory Impact Assessment is required.